The Guardian

Child Welfare Reform: Effecting Real Change – At Last

by Sidney Goldberg

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The great early twentieth century public health reformer and physician, Sara Josephine Baker, recognized that to enlist a mother’s cooperation in trying new child care procedures it was necessary that the mother first be “convinced in her own mind that whatever is proposed will be good for her child.”

The failure of America’s current child welfare system to grasp this basic concept has led, in part, to its interminable inability to successfully carry out its putative mission.

When caseworkers respond to allegations of parental child maltreatment, their focus usually is limited to those behaviors thought to be directly related to the alleged accusations. Parents then are expected and often mandated to attend counseling, substance abuse treatment, and parent education training. Inherent in these three child welfare mainstays is the presumptive promise of improved conditions and a better life, for both the parents and their children. But for the majority of parents who become involved with America’s child welfare system, long-term poverty with its bitter consequences has led them to believe that no such intervention will ever result in any hoped for change.

The many stresses of a constant life in poverty can lead to problematic parent-child interaction or the appearance thereof. For example, parenting, rather than being merely a series of mechanical techniques, necessitates the ability to use empathic understanding of a child’s behavior to respond appropriately. The combining factors resulting from a life in poverty can lead parents to experience extraordinary levels of distress that can seriously interfere with empathic responding.

Making matters worse, these families often are judged unfairly by fellow citizens and by school personnel, who mistakenly and quickly attribute negative interpretations to behaviors which middle-class, and less visible, parents would be given a pass on. Some of the same circumstances, which have precluded productive and satisfying involvement with education, work and culture, also...
have often excluded families’ accessibility to helpful parenting techniques.

When these parents contemplate their children’s sorry educational and vocational opportunities and the stifling indigence that predictably lies in their future, parent education and counseling seem an absurd distraction. When they look around and wish for the same opportunities as their middle-class brethren—an education that leads to satisfying work, access to life’s daily necessities without constant struggle, and the financial means to partake in an array of cultural activities—they just don’t see how the services mandated by child welfare will ever make that happen.

What they experience instead is intrusion marked by a lack of sensitivity to the extremely difficult and paralyzing conditions they have long been unable to overcome. Additionally, ideas about parenting handed down for generations often conflict with some of the techniques offered in mandated parenting classes.

The many lackluster child welfare reforms that predictably appear, like mushrooms after a rain storm, in the wake of high profile disasters have failed to address these issues. A very different way of working with families is long overdue.

Since maltreatment, alleged and real, is often etiologically entwined with poverty’s consequences, problematic parenting behavior must be addressed by helping mothers and fathers also alleviate these conditions. In both concrete and supportive ways, child welfare must help parents begin to build more satisfying lives through education, vocational possibilities and cultural involvement.

Specifically, caseworkers must vigorously and patiently work together with parents to identify vocational, educational and avocational goals and then to locate colleges, occupational training schools, online courses and other appropriate venues. No pre-existing menus will do here. When parents are not already inclined in a certain direction, the caseworker must be equipped to use a large skill and creative repertoire in guiding parents forward. In addition to this required knowledge base, the caseworker will need to provide ongoing support as well as assistance in locating such necessities as child care for when parents are in class or at work.

But the recurring pattern of regurgitated so-called reforms won’t achieve this. Additional caseworkers, lower caseloads, updated risk assessments and a slew of newly published policies will not achieve the elusive change which will finally do justice to the term, reform.

Parents need to believe that the worker understands the family’s overall situation and is confident in their ability to succeed in building a better life. Workers must demonstrate compassion, patience and caring, and a steadfast resolve to turn these qualities into concrete assistance. Both parents and workers must proceed from the perspective which considers the context and interplay of the numerous factors which together have led to parenting problems. It’s shortsighted, it must be emphasized, to ignore these other travails, while simultaneously mandating that parents participate in counseling and parenting classes, as if the impact of the rest of their lives were irrelevant.

It stretches the imagination that anything similar to child welfare’s enduring status quo would
not evoke public outcry in other fields such as law, business or medicine. Child welfare involved families too deserve nothing less than the most competent assistance.

A new and much more extensive preparation and training program for child welfare personnel is integral to the success of this new approach. Child welfare work must be elevated to parallel other well respected professions. This can start with training which provides a solid foundation in both the academic and unique qualities this work requires. A determined commitment to attract and prepare highly capable and motivated individuals should take the form of a specialized child welfare track as part of university graduate psychology programs. Its focus should be developmental psychology with attention to the ways in which the interplay of many and varied factors and behavioral complexities can result in seemingly similar outcomes. Included should be study of the possible broad impact of impoverishment on family life.

Students should leave this program intent on continuing their independent post-graduation study, something the evolving field of psychology requires. Psychological training should not imply, however, that most child welfare involved families require treatment. The problems child welfare involved families usually face are largely existential in nature, not pathological. Psychological knowledge will heighten the worker's sensitivity to the intricate, and sometimes subtle, interplay of factors which together constitute behavior. And this also will enhance the worker's ever important ability to empathize.

Equally necessary is preparing a mind-set whose decisions and recommendations stem solely from the best interests of the family. Doubts about job security or other possible repercussions as a result of fear of a bad turn of events should never be a factor in those recommendations. Until now, however, many families have suffered when workers' self-interest has taken precedence over their own.

Caseworkers must become capable of harnessing a substantial store of knowledge to insightfully understand the nature of each individual family's plight. And that should be the starting point. It should never be assumed that even existential issues are present without that first becoming evident through discussion between parents and caseworker.

Addressing court reform in a recent issue of *The New York Review of Books*, U.S. District Judge Jed S. Rakoff writes, "It is all too easy to conjure up supposed flaws in an experiment that has not been tried: But how can a problem as deep-seated as this one ever be solved without some modest attempt at innovation.” Wise words, and so very apt to child welfare.

As true reform is implemented and this new child welfare standard increasingly becomes known, not only will highly competent and dedicated people be attracted to this profession, but parents too will come to trust that working in tandem with a caseworker can transform their longtime hope for a more satisfying life into reality.

Effecting Real Change

by Sidney Goldberg

Sidney Goldberg worked 25 years in the child welfare system. In 1995, he created and founded The Pathways to Development Program at the Illinois Department of Children and Family Services in Chicago. Pathways provided comprehensive opportunities for children living in foster care to explore and pursue their interests through high quality classes and other learning experiences. This was the only known program of its kind in this country.

In 2002, Mr. Goldberg established The Pathways to Development Program in New York City. Prior to his child welfare work Mr. Goldberg studied with and was supervised by psychologist Albert Ellis, founder of Rational Emotive Behavior Therapy.

**PRACTICE TIPS:**

Five Keys to Oral Advocacy

*Tips and tricks to make your advocacy lasting, positive, and effective.*

**1. BE ORGANIZED**

Whether you are preparing or presenting your case, clarity and organization are essential. The courtroom is a credibility contest (and your credibility matters just as much as that of the witnesses you call to the stand), so make sure your professionalism is always apparent. Keep your counsel table clean. Put your coffee mug on the floor in case of a spill. If you have to take a binder or papers up to the podium, make sure they are clean and well-contained. You don’t want to have to pick up a trail of papers that has fallen behind you. For those of you doing appellate advocacy or motions hearings, condense your outlines and citations to two pages. Then, take a manila folder and staple a page on each side within the folder. Everything you need is contained on the podium in front of you, not behind you on the floor.

**2. USE HEADNOTES.**

Headnotes, also referred to as “chapter headings,” keep your points focused and your direction clear. This is especially useful when you are conducting a direct. If you use indicators like, “Let’s discuss your background,” or, “Now, let’s turn to the night in question,” your witness will be able to better follow your line of questioning and not wander off-topic. Use passive headnotes during direct examination, such as “Let’s talk about what you saw when you arrived at the house.” On cross examination use active headnotes that assist in framing your argument; for example “Now that we have established your presence at the house that night, let’s talk about your relationship with Mr. Jones.”

**3. ANTICIPATE OBJECTIONS.**

Laying proper foundation for your questions, particularly during direct examination, can help you avoid otherwise unnecessary objections. While it may seem tedious, going through the steps of laying a proper foundation can help your witness appear more credible. You appear more credible too. Instead of wasting the judge or jury’s time by having to backtrack to lay proper foundation after an objection, laying the proper foundation from the beginning ensures that everything runs smoothly. Here’s an example of how to lay proper foundation for a telephone call to be authenticated under FRE 901:

**Q:** What happened on the night of January 22nd?

**R:** I received a phone call.

**Q:** Without saying who was on the other end of the call, were you able to recognize the voice of the caller?

**R:** Yes, I was able to recognize their voice.

**Q:** How were you able to recognize the voice?

**R:** Well, it was someone that I speak to frequently so I knew what their voice sounded like.

**Q:** Whose voice was it?

**R:** My friend, Joan.

**Q:** How long have you and Joan been friends?

**R:** About fifteen years.

**4. SAVE THE STORYTELLING.**

Stories are for juries, not judges. While it is essential to weave your theory of the case throughout your direct and cross-examinations, opening statements, and closing arguments so that your story is what the jury will remember during deliberation, the same the same is not true when arguing before the bench. You can—and should—put your motion’s argument into context for the judge. Help her understand why what you are saying matters and why it’s relevant to the case. Putting a motion into context means...
» Practice Tips, from previous page

delivering a three-sentence summary of your side of the case. It’s not a full opening statement to the judge.

5. REMEMBER “SILVER BULLETS.”
The key to effective objections is to treat them as “silver bullets” to be used on werewolves, not just every hairy guy walking down the street. Objections are indications to the jury that the evidence is something you fear. The more you object the more you slow down the examination process. This is fine, so long as it is deliberate. Otherwise, you are just going to annoy the jury or judge. Be deliberate. If your objection is sustained, then fight to make sure that evidence is kept out. Be an advocate. Here’s an illustration: opposing counsel’s witness begins talking about a Facebook message they received from their cousin. The message is damning evidence for your side of the case. You object to hearsay. The judge sustains your objection. The witness answers other questions, but a few minutes later opposing counsel brings up the Facebook message again. Make sure you object to hearsay, again! If it mattered enough to object the first time, then it matters enough to continue to object. (But make sure it matters enough each time you initially object.)

For more advice on oral advocacy or developing your litigation skills feel free to contact NACC Staff Attorneys Brooke Silverthorn or Andrew Yost.

2015 CONFERENCE

Save the Date, and Join Us by the Bay!

38th National Child Welfare, Juvenile & Family Law Conference
Hyatt Regency Monterey Monterey, California
Pre-Con August 24

Registration Opens April 1

www.NACCchildlaw.org

Join our LinkedIn Group and help us select our 2016 conference location!
Case

In re M.E. - Court affirms infant in jeopardy due to medical neglect despite parent’s language barriers.

by Arielle Hanser, NACC Law Clerk; University of Denver Sturm College of Law; JD Candidate 2016

The Supreme Judicial Court of Maine considered whether evidence was sufficient to establish that M.E. was in circumstances of jeopardy, requiring her removal from her parents’ home. The trial court found the parents: (1) refused to recognize M.E.’s serious medical condition and their role in causing it; (2) refused to follow clear medical advice; and (3) could not yet be trusted to take the necessary steps to treat M.E.’s condition and keep her safe. The parents appealed, arguing the record evidence was insufficient to support these findings. Moreover, the parents argued that the court erred in finding that returning M.E. to their care would be contrary to her welfare. The Court affirmed the trial court’s findings, holding that “there is competent evidence in the record to support the court’s findings establishing jeopardy with respect to both parents.”

This finding required the removal of M.E. from her parents’ home to receive necessary medical care and treatment.

In August 2013, the trial court held a jeopardy hearing to determine whether jeopardy existed as to both parents. The parents immigrated to the United States from Uzbekistan several years prior to giving birth to M.E. The parents understood some English but primarily spoke Russian. They gave birth to M.E. in June of 2012. M.E. weighed seven pounds at the time of her birth. Her weight placed her in the fiftieth percentile on the pediatric growth chart. M.E.’s weight indicated a downward trend over the following months. Within six months her weight was below the third percentile. A physician in Maine Medical Center’s pediatrics clinic approached the parents when M.E. was nearly five weeks old. The physician expressed her concerns regarding M.E.’s health through the assistance of Russian interpreters. The physician recommended that the parents increase M.E.’s consumption of solid food and return M.E. to the clinic for examination the following week. The parents did not return or respond to telephone messages until nearly five weeks later.

On April 19th, the parents returned to the clinic with M.E. The medical staff repeated their

1. In re M.E., 97 A.3d 1082, 1083-86 (Me. 2014).
2. Id. at 1085.
3. Id.
4. Id.
5. Id.
6. Id. at 1086.
7. Id. at 1083.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
13. Id. at 1086.
14. Id.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id. at 1083-84.
20. Id.
21. Id.
22. Id.
23. Id.
24. Id.
25. Id. at 1083-84.
26. Id.
27. Id.
28. Id.
29. Id.
30. Id. at 1083-84.
Case from previous page

following weeks.\textsuperscript{31} The physician learned at one point that the parents had missed feedings because either they or M.E. had fallen asleep.\textsuperscript{32} In May, the parents missed a scheduled appointment.\textsuperscript{33} On May 24th, a visiting nurse observed that M.E.’s feeding tube had been removed.\textsuperscript{34} The parents admitted that the tube had been removed for several days and they had not sought medical assistance to have the tube reinserted.\textsuperscript{35} M.E. was brought to the clinic later that day at the insistence of the Department of Health and Human Services (‘the Department’).\textsuperscript{36} The father informed medical staff that he did not wish to force-feed his daughter.\textsuperscript{37} He insisted M.E. did not need a feeding tube.\textsuperscript{38} After learning that M.E. had lost nearly half a pound since she was sent home on April 28th, the Department obtained a preliminary custody order that placed the child in the Department’s custody.\textsuperscript{39} The father became furious and threatened suicide.\textsuperscript{40} The father was sent to a psychiatric hospital.\textsuperscript{41}

The trial court held a contested summary preliminary hearing on June 7, 2013.\textsuperscript{42} The trial court found that “M.E. ‘ha[d] severe failure to thrive’ and needed ‘consistent feeding by mouth [and feeding] tube.’”\textsuperscript{43} The court concluded “the parents [could not] yet be trusted to keep [M.E.] safe,” and that M.E. would be in risk of serious harm if returned to her parents.\textsuperscript{44} The court ordered that M.E. remain in the Department’s custody.\textsuperscript{45} The parents continued to disagree with the recommendations made by the medical staff.\textsuperscript{46} M.E.’s physicians discussed with the parents their recommendations for inserting a gastrostomy tube directly into M.E.’s stomach.\textsuperscript{47} The parents rejected these recommendations and insisted that the child “would ‘grow out of her condition’ if returned to their care.”\textsuperscript{48} On July 29, 2013, the Department authorized the surgical procedure over the parents’ objection and a gastrostomy tube was inserted into M.E.’s stomach.\textsuperscript{49} The trial court then held a jeopardy hearing and found that jeopardy existed as to both parents.\textsuperscript{50} This finding was based on the parents’ (1) refusal to recognize the child’s serious medical needs and their role in causing M.E.’s weight loss; (2) refusal to follow the advice of medical professionals regarding M.E.’s needed treatment; and (3) the lack of trust expressed by the parents for the medical staff that affected the medical staff’s ability to keep M.E. safe.\textsuperscript{51} The court found that the noncompliance of the parents presented a threat of serious physical harm to the child.\textsuperscript{52} M.E. was ordered to remain in the Department’s custody.\textsuperscript{53} The parents appealed.\textsuperscript{54}

The Court reviewed the trial court’s factual findings for clear error, giving deference to the trial court.\textsuperscript{55} The Court, citing 22 M.R.S. § 4002(6)(A) and (B-1) (2013), defined jeopardy as “serious abuse or neglect as evidenced by… serious harm or threat of harm” or by the “[d]eprivation of necessary health care when the deprivation places the child in danger of serious harm.”\textsuperscript{56} The Court concluded that the record evidence supported findings establishing jeopardy regarding both parents.\textsuperscript{57} Specifically, the record evidence supported that the parents had refused to recognize the severity of their daughter’s medical condition.\textsuperscript{58} For example, the parents had remained adamant in their beliefs that M.E. was just small for her age and that she would “outgrow her condition” over time.\textsuperscript{59} Furthermore, the parents did not follow the

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31. \textit{Id.} at 1084.
32. \textit{Id.}
33. \textit{Id.}
34. \textit{Id.}
35. \textit{Id.}
36. \textit{Id.}
38. \textit{Id.}
39. \textit{Id.}
40. \textit{Id.}
41. \textit{Id.}
42. \textit{Id.}
44. \textit{Id.}
45. \textit{Id.}
46. \textit{Id.}
47. \textit{Id.}
48. \textit{Id.}
49. \textit{Id.} at 1086.
50. \textit{Id.} at 1084.
51. \textit{Id.}
52. \textit{Id.}
53. \textit{Id.} at 1084-85.
54. \textit{Id.} at 1085.
55. \textit{Id.}
56. \textit{Id.}
57. \textit{Id.}
58. \textit{Id.}
59. \textit{Id.}
\end{flushright}
advice of M.E.’s physicians. The parents argued that the language barrier may have contributed to their inability to follow the medical staff’s advice. The Court did not find this argument persuasive. Numerous interpreters were available to the parents throughout M.E.’s treatment. The Court found that testimony from M.E.’s physician supports the trial court’s finding that the parent’s noncompliance provided a serious threat of physical harm to M.E. The Court ultimately found that the trial court did not err in determining that circumstances of jeopardy would likely persist in the future if the child were returned to the parents’ care.

A critical piece of this case lies in the case’s footnotes: that on July 29, 2013, the Department authorized the surgical procedure over the parents’ objection, and a gastrostomy tube was inserted into M.E.’s stomach. Although this case presents an arguably clear-cut example of parental neglect, and as such the State’s interest in protecting the infant M.E. outweighed the interest of her parents, things may not always be so simple. For other cases, the dividing line of which interest outweighs the other may prove far more complex and controversial, especially when a four-way tug-of-war of medical-decision-making interests ensues between parents, physicians, the State, and the child. The legal standard of the child’s best interest as it exists does not provide much clarity for resolving these issues. Children’s attorneys could work through the appellate process to challenge courts to better define this standard, especially as it applies in more complex cases. Children’s attorneys could also work to establish an alternative standard altogether. One that better defines what is best for families when difficult medical decisions are at stake.

In re M.E., 97 A.3d 1082, 1085 (Me. 2014).
61. Id.
62. Id.
63. Id.
64. Id.
65. Id. at 1086 (citing In re E.L., 96 A.3d 691, 695 (Me. 2014)).
Policy Update

The newly re-formed NACC Policy Committee had its first meeting in January. The Committee is examining the current Policy Agenda to determine what needs to be added and/or amended to better reflect the goals of the Committee as well as NACC as a whole. The Committee will meet monthly and will establish an “actionable” policy agenda that includes both national and local policy/advocacy support. If you have any local policy/advocacy issues in your jurisdiction that you want to discuss with the NACC or with which you would like NACC’s support, please fill out the Advocacy Request form on our website. Or if you prefer, contact Staff Attorney, Brooke Silverthorn directly at Brooke.Silverthorn@childrenscolorado.org.

Training Update

The NACC Training Department continues to be busy in 2015. We are currently working with North Carolina Administrative Office of the Courts to develop a multi-day trial skills curriculum and evaluation toolkit. Earlier this month, Andrew Yost, Senior Staff Attorney, partnered with the Children’s Bureau to help develop state child welfare capacities and system reform efforts. This summer, NACC faculty will be partnering with Wyoming to deliver their annual GAL conference. And finally, we continue to work with the Child Welfare Training System in Colorado to train DHS caseworkers. Currently, Brooke and Andrew are designing the curriculum for the Ethics and Liability course which will be delivered throughout Colorado starting in February.

Child Welfare Law Certification

by Daniel Trujillo, Certification Director

Record Exam Month

We had 54 examinees sit in December 2014 – by far the largest group since we started individually scheduled exams. Results will be out around mid-March which will bring us to over 600 CWLS! Another 350 applicants are in process. Please consider joining your CWLS colleagues by visiting the Certification page at www.NACCchildlaw.org, or contact Daniel Trujillo, 303-864-5359, or Daniel.Trujillo@childrenscolorado.org for more information.

Congrats to the new CWLS!

Jennifer Rowan Ennerberg GA
New Board Members Elected

by Gerry Glynn

As President of the Board of the National Association of Counsel for Children, I am proud to welcome our newest board members, Janet Bledsoe and Joseph Gunn. These new members and three returning members (Henry Plum, Jane Okrasinski and Janet Sherwood) were elected in December through our membership vote. All these Board members’ bios appear at right. As a membership organization, we want to have a strong Board that supports the organizational mission, to improve the lives of children and families by ensuring that judicial proceedings produce justice. Our diverse Board helps us accomplish our goals of strengthening the delivery of legal services for children; enhancing the quality of legal services affecting children; improving courts and agencies serving children; and, advancing the rights and interests of children.

We are not a typical non-profit board. Although we do have the obligation to assist in the fundraising needed to keep this important work moving forward, we are primarily subject matter experts who help the incredible staff serve the membership. It is our membership that does the very important work of protecting children and families in every corner of our nation.

Thank you to all who nominated someone for Board. We will continue to look for new board members throughout the year and encourage our members to step forward if they would be interested in serving the organization in this way. Our next election will be next Fall.

Newly-Elected & Returning NACC Board Members

Janet L. Bledsoe, J.D., L.L.M.

Janet Bledsoe is Assistant Director of the Attorney Ad Litem Program of the Arkansas Administrative Office of the Courts. Her experience has incorporated both private and public sector positions in this field, including service in the Office of Chief Counsel for the Arkansas Department of Human Services. Ms. Bledsoe’s work on contract compliance and performance evaluation for legal representation of children was presented at the 2013 NACC annual conference.

Joseph D. Gunn III, M.D.

Dr. Joseph Gunn is Associate Professor of Pediatrics at the School of Medicine of Washington University in St. Louis, Missouri. He has also served in child protection and pediatric emergency medicine at the University of Michigan and Duke University. Dr. Gunn is a fellow of the American Academy of Pediatrics and has published numerous articles on pediatric medicine.

Jane Okrasinski, J.D.

Jane Okrasinski is the Executive Director of the Georgia Association of Counsel for Children. She began her advocacy for children and families as a journalist, and has contributed to major class action litigation and policy reform for child and family services in Georgia.

Henry J. Plum, J.D.

Henry J. Plum is a nationally recognized speaker and educator in the field of child abuse and neglect. A former Assistant District Attorney, he is in private practice in Milwaukee, Wisconsin and serves as a special prosecutor and legal consultant in child-related litigation for both governmental and private agencies. He is the legal advisor/parliamentarian for the International Society for the Prevention of Child Abuse and Neglect and past president of NACC.

Janet Sherwood, J.D., CWLS

Janet Sherwood is an attorney, advocate and Certified Child Welfare Law Specialist practicing in northern California. She has served as Training Director and Board President for Advokids, a California-based advocacy organization. She has served on the board of the Northern California Association of Counsel for Children, is a past president of NACC, and serves as Judge pro tem in San Francisco and Alameda Counties.
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NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families